

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Food, Conservation, and Energy Act of 2008	)	GN Docket No. 09-29
Report on Rural Broadband Strategy	)	

To: The Commission

**COMMENTS OF  
THE WIRELESS INTERNET SERVICE PROVIDERS ASSOCIATION**

The Wireless Internet Service Providers Association (“WISPA”), pursuant to Public Notice, DA 09-561 (rel. March 10, 2009) (“*Public Notice*”), hereby suggests ways that the Commission can fulfill its obligations under Section 6112 of the Food, Conservation, and Energy Act of 2008 (“Farm Bill”),<sup>1</sup> which requires the Commission and the Secretary of Agriculture (“USDA”) to deliver a report to Congress (“Report”) containing recommendations on a comprehensive rural broadband strategy.

**Introduction**

Founded in 2004, WISPA is the trade association representing the interests of more than 350 Wireless Internet Service Providers (“WISPs”), vendors, system integrators and others interested in promoting the growth and delivery of wireless broadband service. Collectively, WISPs provide fixed wireless Internet access services to more than 2,000,000 consumers and businesses. Many of these subscribers live in rural areas of the country where wired technologies, such as DSL and cable modem service, do not reach and are unlikely to extend because of the high infrastructure deployment costs. Created by the Commission’s allocation of unlicensed spectrum in the early 1990s, many WISPs are eager to extend their networks further into more rural and

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<sup>1</sup> See 110 P.L. 246; 122 Stat. 1651 at §6112.

remote areas where demand for broadband is great but where broadband currently is not available. Many WISPs operate in license-exempt bands (*e.g.*, 900 MHz, 2.4 GHz and 5.8 GHz) and the 3650-3700 MHz “licensed-lite” band. The vast majority of WISPs are “small businesses,” as defined in the Small Business Act.

WISPA has emerged as the advocacy organization representing the interests of WISPs. In 2007, WISPA filed comments in the 700 MHz proceeding seeking to make spectrum more accessible to small entities.<sup>2</sup> More recently, WISPA filed extensive comments<sup>3</sup> and *ex parte* presentations<sup>4</sup> regarding use of the television white spaces, advocating rules that would promote affordable wide-area fixed wireless services under a “licensed-lite” approach. Last week, WISPA filed a petition for reconsideration of the white space rules asking the Commission to eliminate costly and burdensome spectrum sensing rules and to amend other rules to make WISP deployment in rural and underserved areas more flexible and cost-effective. WISPA representatives have been active participants in the joint public meetings concerning the broadband stimulus provisions of the American Recovery and Reinvestment Act of 2009 (“Recovery Act”),

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<sup>2</sup> See WISPA Comments filed May 23, 2007 *In the Matter of Service Rules for 698-746, 747-762 and 777-792 MHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 8064 (rel. Apr. 27, 2007).

<sup>3</sup> See WISPA Comments filed Feb. 20, 2007 in *Unlicensed Operation in the TV Broadcast Bands; Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band*, First Report and Order and Further Notice of Proposed Rulemaking, ET Docket Nos. 04-186, 02-380, 21 FCC Rcd 12266 (rel. Oct. 18, 2006); *see also* Petition for Reconsideration of the Wireless Internet Service Providers Association in ET Docket Nos. 04-186, 02-380 filed March 16, 2009.

<sup>4</sup> *See, e.g.*, Notices of Ex Parte Presentations from Stephen E. Coran, Counsel to WISPA, to Marlene H. Dortch, FCC Secretary, ET Docket Nos. 04-186 and 02-380, dated August 1, 2008; Letter from Jack Unger, WISPA Secretary and FCC Committee Chair, to Marlene H. Dortch, FCC Secretary, ET Docket Nos. 04-186 and 02-380, dated October 22, 2008; Notices of Ex Parte Presentations and Letters from Stephen E. Coran, Counsel to WISPA, to Marlene H. Dortch, FCC Secretary, ET Docket Nos. 04-186 and 02-380, dated October 28, 2008.

again advocating grant eligibility and selection criteria that will best promote broadband service to rural, unserved and underserved areas.<sup>5</sup>

Many WISPs have received federal and state grants and loans to assist successful construction and deployment in rural areas. In particular, WISPs have used the grant, loan and loan guarantee programs of the USDA's Rural Utilities Service ("RUS") to fund community centers, educational services and broadband access in small, rural communities. WISPs have been very involved in using these existing programs to address pent-up demand for broadband access and have proved to be responsible stewards of public funding.

Having constructed and operated wireless networks in rural areas of the country where broadband service would not otherwise be available, WISPs are uniquely experienced in the trials and successes of providing service in areas where other ISPs have chosen not to offer service. WISPA strongly believes that an increased level of cooperation among the Commission, USDA and the Department of Commerce, via the Farm Bill and the Recovery Act, will ensure that the needs of consumers in rural areas can be identified and satisfied through appropriate funding of sustainable projects. WISPA is pleased to offer its suggestions to assist the Commission in its preparation of the Report.

### **Discussion**

In Section 6112, Congress directs the Commission, in coordination with USDA, to deliver to Congress by May 22, 2009 a Report describing a comprehensive rural

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<sup>5</sup> Publ. L. 115-1 (2009).

broadband strategy containing “recommendations” in four specific categories and describing “goals and timeframes to achieve the purposes of the report.”<sup>6</sup>

### ***Recommendations***

WISPA believes that the recommendations should include the following components.

*First*, to promote interagency coordination, WISPA encourages greater communications between the Commission and USDA. This could be accomplished by creating a joint rural task force designed to promote more expeditious decisions on rural issues within their respective authorities, to implement policies in a consistent manner and to ensure that Congress is informed of the agencies’ activities in carrying out policy and regulatory objectives. The task force should be a permanent committee co-chaired by members of the Commission Chairman’s office and the USDA Secretary’s office and staffed by a cross-section of personnel within each agency. The task force should meet on a regular basis and more frequently as circumstances dictate.

The task force should coordinate on how to best implement the broadband stimulus provisions of the Recovery Act. WISPA is pleased that interagency coordination occurs today and believes that such coordination should continue in a formal manner. To the extent that regulatory relief from the Commission is necessary for a grant or loan applicant to obtain funding, the task force should be available to respond to questions and, where necessary, expedite Commission responses to requests for waivers where the public interest supports making funding available to rural areas. WISPA acknowledges that the Commission recently was required to grant waivers to Globalstar

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<sup>6</sup> See 110 P.L. 246 at §§6112(a)(1), (a)(2).

as a predicate to RUS approval of funding for rural broadband deployment.<sup>7</sup> In light of the scope of the broadband stimulus programs under the Recovery Act, WISPA believes that a task force could formalize this interagency process to better meet the Recovery Act's mandate to distribute funds by the September 30, 2010 statutory deadline. To give a hypothetical example that could arise under the Recovery Act, if RUS desires to approve a grant application predicated on the use of white space spectrum in a rural community, the Commission should be favorably disposed to quickly granting waivers of power limits or other technical parameters to ensure that the purposes of the grant and of the applicant's business plan can be achieved.

*Second*, the Commission and USDA should strive to use common definitions of key terms such as "rural area" and "broadband." At present, the Commission defines a "rural area" as any county that has a population density of 100 persons or fewer per square mile.<sup>8</sup> For purposes of its broadband grant and loan programs, USDA defines "eligible rural community" as any area of the United States (including territories and insular possessions) that is not contained in an incorporated city or town with a population in excess of 20,000 inhabitants.<sup>9</sup> Use of such dissimilar criteria needlessly complicates the flow of funds to rural broadband users and hinders interagency coordination. Similarly, the agencies should develop a common definition of

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<sup>7</sup> *In the Matter of Globalstar Licensee LLC; Application for Modification of License for Operation of Ancillary Terrestrial Component Facilities*, File No. SAT-MOD-20080516-00106; Call Sign: S2115, Order and Authorization, FCC 08-254 (rel. Oct. 31, 2008) at ¶¶21-22, 41.

<sup>8</sup> *See Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, Report and Order and Further Notice of Proposed Rule Making, 19 FCC Rcd 19078 (2004) at ¶¶11-12. WISPA believes that, despite the availability of demographic and economic information on a county-wide basis, this definition is insufficient to accurately identify areas that are truly "rural." As a result, certain benefits to "rural" parts of the country are not available. In its comments to be filed in response to the NTIA/RUS Joint Request for Information, WISPA will propose a more expansive definition of "rural" used by the Census Bureau. *See* 74 Fed.Reg. 10716 (March 12, 2009).

<sup>9</sup> 7 C.F.R. §1738.2 (2009).

“broadband.” Given that the Farm Bill requires the Commission and USDA to cooperate to develop a comprehensive rural broadband strategy, it would be fundamentally logical for that obligation to rely on a common definition of “broadband.” Using common terminology, data collection for the national broadband mapping project, grant eligibility and selection and the development of the national strategic plan will enable statistical information and analysis to be applied consistently across both agencies.

*Third*, to the extent possible, information about broadband availability should be shared and collected in a common database. As the Commission collects broadband data in Form 477 and begins assembling data for the broadband mapping project, it should share this information with RUS so that it can better administer its grant and loan programs. Likewise, RUS should provide information it learns through its programs to the Commission so that the Commission can consider that information in connection with its responsibilities.

*Fourth*, each agency should be encouraged to make public filings with the other agency in rule making, waiver and other proceedings. For instance, the public and the Commission should have the benefit of RUS’ comments, recommendations and ideas as the Commission develops its national broadband plan under the Recovery Act. The public nature of such filings would promote transparency in the eyes of the public and would provide the public with insight into the proceedings.

### ***Goals and Timeframes***

WISPA hopes and expects that funding under the Farm Bill and the Recovery Act represents the initial – not the only – steps that the government will take to stimulate broadband development in rural communities. Although a portion of the Recovery Act

funds likely will be distributed before the Farm Bill Report and Recovery Act report are prepared and delivered, it will be imperative for future programs to quickly develop the national map and develop common terminology. The task force can assist in ensuring that each stage of funding is based on the best available information.

The joint task force should be appointed as soon as possible. Once the terms “rural” and “broadband” are harmonized by NTIA and RUS under the Recovery Act, the Commission should immediately issue a Notice of Proposed Rule Making proposing (not tentatively concluding) that it should adopt the same definitions. At that point, one set of data based on common terminology can begin to be assembled as the Commission prepares its report under the Recovery Act.

### **Conclusion**

WISPA believes that closer cooperation between the Commission and USDA will create a more consistent and comprehensive policy that will benefit consumers in rural areas. WISPA urges the Commission to include in its Report the suggestions contained in these Comments.

Respectfully submitted,

**THE WIRELESS INTERNET SERVICE  
PROVIDERS ASSOCIATION**

March 25, 2009

By: */s/ Richard Harnish, President*  
*/s/ Jack Unger, Chair of FCC Committee*  
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